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THE JOINT COMMITTEE  
ON ATOMIC ENERGY:  
A MODEL FOR LEGISLATIVE  
REFORM?

BY HAROLD P. GREEN

PROGRAM OF POLICY STUDIES IN SCIENCE AND TECHNOLOGY  
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## *Introduction*

The Joint Committee on Atomic Energy came into existence by virtue of section fifteen of the Atomic Energy Act of 1946:<sup>1</sup> an extraordinary congressional committee created as a legislative counterweight to the exceptional powers granted the executive branch in dealing with atomic energy, which was regarded as a governmental problem of unprecedented magnitude and complexity.<sup>2</sup> The JCAE generally has been adjudged by members of Congress as an extremely successful experiment. It has been praised frequently and seldom criticized. It is

in terms of its sustained influence in Congress, its impact and influence on the Executive, and its accomplishments, probably the most powerful Congressional committee in the history of the nation.<sup>3</sup>

Such a committee is a tempting exemplar for legislative reform and for strengthening the power of the Congress in its inevitable and continuing power struggle with the executive branch. Nevertheless, after seventeen years of experience with the JCAE, Congress, although it has frequently toyed with the possibility of using the JCAE as a model in other legislative areas, has not created any similar committees.<sup>4</sup>

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<sup>1</sup> Provision was originally made for the JCAE in section 15 of the Atomic Energy Act of 1946, 60 Stat. 772. The comparable provision of present law is section 201 of the Atomic Energy Act of 1954, 68 Stat. 956 (1954), 42 U.S.C. § 2251 (1958).

<sup>2</sup> An Atomic Energy Commission was created to manage the national atomic energy program. A broad area, at the heart of this program, was to be conducted as an absolute government monopoly, and under conditions of statutorily imposed secrecy. Severe criminal sanctions were provided for violations of the act. For a description of the 1946 act, see generally Newman and Miller, *The Control of Atomic Energy* (1947).

<sup>3</sup> Green and Rosenthal, *Government of the Atom: The Integration of Powers*, 266 (1963).

<sup>4</sup> From time to time, members of Congress have proposed the establishment of other joint congressional committees, explicitly patterned after the JCAE, in the areas of civil defense, intelligence, space, science and technology, among others. In only two instances, however, has the concept of a joint committee been brought to the floor of the House or the Senate. In 1956, S. Con. Res. 2, 84th Cong. 2d Sess., to establish a joint committee on intelligence, was defeated on the Senate floor although thirty-six Senators had joined in sponsoring it. 102 Cong. Rec. 5922-39,

## I. *The Role of Congressional Committees*

The Constitution of the United States created the House of Representatives and the Senate as coequal components of the Congress; it contemplated that each of these bodies would manage and oversee its own internal affairs.<sup>5</sup> The use of committees within each house of Congress arose as a necessary and indispensable means for transacting legislative business. By the end of the nineteenth century, the committees of the House and the Senate had become the real workshops of Congress, and most legislative decisions were made in the committees. The full body of each house acted primarily to ratify, or to amend, the basic conclusions reached in committee.

The principal function of the congressional committee is to consider and act upon legislative proposals, and to report to the entire body of the House or the Senate those bills which the committee believes are fit for consideration and enactment. The committee structure has led inevitably to specialization. Each house has created a number of standing committees, which are vested with primary jurisdiction and authority in a particular substantive area of legislative concern. Moreover, as an adjunct to its legislative role, each committee also engages in "oversight" of executive activities within the scope of the committee's jurisdiction.<sup>6</sup> Although such oversight sometimes seems to become an end in itself, it traditionally is regarded as a means for giving the committees the information and background necessary to legislate wisely and effectively.

In playing its role in the legislative process, the congressional committee first considers bills which are referred to it. In performing this function, the committee acts as a body of specialists which decides first whether or not such legislation is appropriate and, if appropriate, what the terms of the bill should be. Most bills referred to committees die without any perceptible action being taken, largely as a result of a staff conclusion that they do not warrant consideration.

6047-63, 6067-68 (1956). In 1958, the Senate passed the National Aeronautics and Space Act (S. 3609, 85th Cong. 2d Sess. (1958)) with a provision for a Joint Committee on Aeronautics and Space, but the provision was deleted by the conference committee, and thus is not contained in the present act, 72 Stat. 426, 42 U.S.C. §§ 2451-2459, 2471-2476 (1958).

<sup>5</sup> U.S. Const. art I, § 5.

<sup>6</sup> The oversight function is specifically recognized in the Legislative Reorganization Act of 1946 which directs each standing committee of the House and the Senate to "exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the Congress by the agencies in the executive branch of the Government." 60 Stat. 832 (1946), 2 U.S.C. § 190(d) (1958).

When a bill is to be given serious consideration, the committee usually, but not always, holds hearings on it. Following the hearings, the bill is "marked up," *i.e.*, corrected or modified, and a report is prepared explaining the bill and the necessity and desirability of its enactment. This process takes place in the appropriate committees of both the House and the Senate: thus, a bill that becomes law (and many which do not) usually goes through the above-described procedure in both the House and the Senate. When the bill is reported by the committee to its parent house, members of the committee usually act as floor managers of the bill. If the House and Senate pass different versions of the bill, a conference becomes necessary to iron out the differences. Members of the conference committee are usually drawn from the cognizant committees of each house.

Committees which perform such legislative functions are known as "standing committees" and exist by virtue of the internal rules of the House and the Senate. These rules create the committees, fix their size, and define their jurisdiction.<sup>7</sup>

## II. *The JCAE*

The first unique characteristic of the JCAE is that it is a creature of statute, rather than of rule. Section 201 of the Atomic Energy Act of 1954 establishes the JCAE as a body of eighteen members—nine from the House and nine from the Senate. In each instance, no more than five members may be of the same political party.<sup>8</sup> The JCAE's legislative jurisdiction is defined by statute to include

all bills, resolutions, and other matters in the Senate or the House of Representatives relating primarily to the Commission or to the development, use, or control of atomic energy. . . .<sup>9</sup>

Senate and House members of the committee are directed explicitly to report to their respective houses "by bill or otherwise" their recommendations with respect to matters within the jurisdiction of their respective houses which have been referred to or otherwise

<sup>7</sup> E.g., Rule XXV of the Standing Rules of the Senate provides for 16 standing committees of the Senate "with leave to report by bill or otherwise." Each of the 16 committees is identified and its jurisdiction is specifically defined in terms of the various subject matters it will consider. In addition, this Rule specifies the number of Senators comprising each standing committee, ranging from 7 on the Committee of the District of Columbia to 27 on the Committee on Appropriations.

<sup>8</sup> 68 Stat. 956 (1954), 42 U.S.C. § 2251 (1958).

<sup>9</sup> 68 Stat. 956 (1954), as amended, 42 U.S.C. § 2252 (Supp. IV 1963).

come within the JCAE's jurisdiction.<sup>10</sup> Such authority makes the JCAE a legislative committee with all of the powers of a standing committee of the House or the Senate. It is the first and only joint committee to possess legislative powers. Other joint committees have been created, but they have been in the nature of service committees without power to consider and act on legislation.<sup>11</sup> The fact that the JCAE is created by statute and not by rule contributes to its power since it is clearly a creature and agent of the Congress as a whole, and its jurisdiction and authority must be regarded as more authoritatively defined than those of conventional committees. Moreover, to the extent that the JCAE's exercise of its express powers impinges on the province of the executive branch, the latter is weakened in its opposition to such exercise by virtue of the fact that the President signed the bill vesting the JCAE with these powers.<sup>12</sup>

Originally, the act provided that the JCAE would select a chairman and a vice-chairman from among its members, but made no provisions as to whether these should be drawn from the House or the Senate members.<sup>13</sup> It evidently was assumed that the Senate would be regarded as the "senior" body, and that the chairman would be the ranking majority member of the Senate component of the committee. The first chairman of the committee was Senator Brian McMahon (D.-Conn.), who became chairman by virtue of the fact that he was the principal author of the 1946 act. During the 80th Congress, when the Republicans controlled both houses, Senator Bourke Hickenlooper (R.-Iowa), the ranking Republican Senate member of the JCAE, replaced McMahon as chairman. McMahon resumed the chairmanship when the Democrats regained control in the 81st Congress. Upon McMahon's death in 1952, the vice-chairman of the committee, Democratic Representative Carl Durham (D.-N.C.), took over the chairmanship. In 1953, however, House members of the committee insisted upon election of one of the House members as chairman, and they prevailed after a long stalemate.<sup>14</sup> The Atomic

<sup>10</sup> Ibid.

<sup>11</sup> E.g., the Joint Committee on Internal Revenue Taxation; the Joint Committee on the Library; the Joint Committee on Printing; and the Joint Committee on the Economic Report. Joint committees also have been created from time to time to deal with specific transient or temporary matters.

<sup>12</sup> In 1955, the JCAE's counsel asserted that the executive branch, explicitly including the President, by his assent to the provisions of the Atomic Energy Act of 1954, waived any discretionary authority which might have existed to withhold information from the JCAE. 1 CCH At. En. L. Rep. ¶ 1258. See the discussion of the JCAE's right to be "fully and currently informed" in subsequent text.

<sup>13</sup> 60 Stat. 772 (1946).

<sup>14</sup> See Green and Rosenthal, *supra* note 3, at 55-56.



Energy Act of 1954 specifically provided for rotation of the chairmanship between the House and Senate each Congress (every two years), with the chairman being elected by and from the House or Senate members of the JCAE, whichever group was then entitled to the chairmanship.<sup>15</sup> Thus, in a situation in which one political party controlled the House and the other party controlled the Senate, the Democrats and Republicans would each have nine seats on the committee and the chairmanship would go to the ranking member of the party controlling the house then entitled to the chairmanship. The chairman obviously would not have a majority of his own party on the committee. He might, moreover, be of a party different from the President.

All bills dealing with atomic energy, whether introduced in the House or the Senate, are referred to the JCAE for action.<sup>16</sup> If hearings are held, the committee sits as a committee, *i.e.*, both House and Senate members participate fully and equally. When a bill is reported out, a ranking JCAE member from each house reports the bill on behalf of the JCAE to his house, and both the bill and report bear the identifying numbers of that house.<sup>17</sup> Members of the JCAE of each house are the floor managers of the bill in their respective houses. If the House and the Senate pass different versions of the bill, the committee of conference generally consists of Senators and Representatives drawn from the JCAE membership.

If our description of the JCAE stopped at this point, the JCAE could be regarded as substantially identical to the usual standing committees except for (1) its jointness, and (2) its statutory basis. It would exercise precisely the same types of powers as the ordinary committee. In actuality, however, the same statute which creates the JCAE vests it with an array of extraordinary statutory powers.

Perhaps the most impressive and useful statutory authority of the JCAE is the duty imposed upon the AEC to keep the JCAE "fully

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<sup>15</sup> 68 Stat. 956 (1954), 42 U.S.C. § 2253 (1958).

<sup>16</sup> *Supra* note 9.

<sup>17</sup> *E.g.*, on February 25, 1964, a bill was reported out by the Joint Committee. Congressman Holifield reported the bill, H.R. 9711, to the House with H.R. Rep. No. 1151, and Senator Pastore reported the identical bill, S. 2448, to the Senate with an identical report, S. Rep. No. 877. It would appear, theoretically, that the JCAE members of one house could report a bill favorably to their parent body even though their colleagues from the other house refused to report the bill to their body. This has never happened. In the case of nominations of AEC commissioners which require Senate confirmation, hearings are held before the Senate members of the JCAE only (although House members are entitled to attend and ask questions as a courtesy), and the report on the nomination is to the Senate only.

and currently informed" as to all of the AEC's activities.<sup>18</sup> The JCAE has aggressively and imaginatively used its right to be kept fully and currently informed so as to reduce the doctrines of executive privilege and separation of powers—if not to a shambles—to a near nullity in the atomic energy sphere.

In the case of the ordinary committees of the House and the Senate, there is no explicit right to information from the executive. Rather, the right to obtain information rests on the implied power of the Congress, as a coequal branch of government, to obtain information necessary to enable it to perform its constitutional responsibilities.<sup>19</sup> Correspondingly, the executive branch frequently has asserted an implied privilege to withhold information from the Congress when, in its opinion, providing such information would impair the ability of the executive branch to function effectively in the performance of its constitutional responsibilities. Thus, the executive branch consistently has refused over the years to give the Congress or its committees access to investigative reports, personnel files, internal working papers, and many other types of information.<sup>20</sup> In actual practice, the Congress always has been compelled to acquiesce in the executive's refusal to provide such information.<sup>21</sup>

In the case of the JCAE, however, the executive branch has not been able to hold the line against JCAE demands for information of the type which the executive has refused to give other committees. The JCAE, for example, always has had virtually unlimited access to FBI, security, and personnel files involving atomic energy matters, despite the steadfast refusal of the President to make such information available to other congressional committees. The JCAE contends that its statutory right to be kept fully and currently informed gives it an absolute right to any and all information in the

<sup>18</sup> A parallel provision requires the Department of Defense to keep the JCAE "fully and currently informed with respect to all matters within the Department of Defense relating to the development, utilization, or application of atomic energy." A third provision requires any other government agency to provide the JCAE with "any information requested by the Joint Committee with respect to the activities or responsibilities of that agency in the field of atomic energy." 68 Stat. 956 (1954), as amended, 42 U.S.C. § 2252 (Supp. IV 1963).

<sup>19</sup> It will be noted that the oversight function of standing committees as specified in the Legislative Reorganization Act of 1946 is implemented by study of such data as may be "submitted" to the Congress by the executive branch. See *supra* note 6.

<sup>20</sup> See Staff of Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 85th Cong., 2d Sess. (1958), *The Power of the President to Withhold Information From the Congress—Memorandum of the Attorney General* (Comm. Print; Part I 1958, Part II 1959), referred to in Green and Rosenthal, *supra* note 3, at 73 n.4. See also Kramer and Marcuse, *Executive Privilege—A Study of the Period 1953-1960*, 29 Geo. Wash. L. Rev. 623 (1961).

<sup>21</sup> See Green and Rosenthal, *supra* note 3, at 73-74.

hands of the AEC, and that, to the minimal extent the JCAE respects the doctrine of executive privilege at all, it does so only as a matter of self-restraint and grace.<sup>22</sup> In any event, the history of the JCAE-AEC relationship is one of (a) steadily expanding JCAE intrusion into areas which otherwise would be shielded by the doctrine of privilege, and (b) recurrent capitulation of the executive branch to the JCAE's demands. The major accomplishment of the JCAE in this respect has been to compel the executive branch, through the AEC, to keep it informed of matters *while they are pending*, or are still in draft or preliminary form.

This was achieved largely through the intimidating effect of a relentless attack upon the AEC for its failure to inform the JCAE of various matters which the committee thought important, or its failure to inform the JCAE of various matters before final action was taken. For example, the AEC was criticized severely for not giving the JCAE advance notice of a major policy statement on uranium procurement prior to announcement of the new policy in a 1957 speech by an AEC official.<sup>23</sup> If advance notice had been given, it is likely that the JCAE would have forced some major changes in the new policy before it was announced.<sup>24</sup> The JCAE, in effect, has converted the right to know into the right to be consulted before final actions are taken, and hence into the power to participate in and control executive decisions.<sup>25</sup>

A second statutory authority is the right of the JCAE "to utilize the services, information, facilities and personnel of the departments and establishments of the Government."<sup>26</sup> Although this authority seldom has been used in explicit form, members of the JCAE have made extravagant claims as to its scope and utility. It has been argued, for example, that the JCAE has the right to demand that FBI agents be detailed to perform investigations for the committee.<sup>27</sup> In reality, this authority serves the JCAE as a useful reserve power,

<sup>22</sup> Id. at 102 & n.81.

<sup>23</sup> Address by Jesse Johnson, Director of the AEC's Division of Raw Materials, October 28, 1957. For a discussion of this, see Green and Rosenthal, *supra* note 3, at 97.

<sup>24</sup> The JCAE's attack was concentrated largely on AEC Chairman Lewis L. Strauss; his alleged willful failure to discharge his statutory duty to keep the JCAE fully and currently informed became a major factor in the subsequent Senate fight which resulted in denial of his confirmation as Secretary of Commerce. For examples of JCAE pressures in this regard, see Green and Rosenthal, *supra* note 3, at 89-103.

<sup>25</sup> Green and Rosenthal, *supra* note 3, at 89-103.

<sup>26</sup> 68 Stat. 957 (1954), 42 U.S.C. § 2255 (1958).

<sup>27</sup> Remarks of Sen. Hickenlooper, 100 Cong. Rec. 10696 (1954).

since it can always lay claim to the right to conscript cooperation which it cannot otherwise obtain.

A final unique authority vested in the JCAE is found in several provisions of the Atomic Energy Act which require that certain actions of the AEC or the executive branch lie before the JCAE for a given period of time before they become effective.<sup>28</sup> This is analogous to the "legislative veto," but is not actually the same.<sup>29</sup> Here there is no necessity to veto, since the JCAE's stated opposition to an executive proposal is usually enough to kill it; otherwise, as the executive well recognizes, the JCAE could easily take the matter to the floor and have both houses adopt a bill or resolution killing it.<sup>30</sup>

The history of the JCAE demonstrates the skillful use of these unique powers so as to parlay them into outright JCAE domination of the atomic energy program.<sup>31</sup> Using a corporate analogy, the JCAE has become an active board of directors establishing policies to be implemented by management—the executive branch—under the watchful eyes of the JCAE. (Query: Who are the stockholders? How does the President figure in this analogy?) This position has been achieved, however, without any real showdown with the executive branch. Unlike other areas of government in which the executive has stood firmly to resist legislative encroachment,<sup>32</sup> in atomic energy the executive has almost always retreated ingloriously in the face of the JCAE's expansionist probes. There is little question but that determined executive resistance to JCAE incursions could have blocked—or at least minimized—the committee's assault on the citadel

<sup>28</sup> See 68 Stat. 929 (1954), 42 U.S.C. § 2071 (1958); 68 Stat. 932 (1954), 42 U.S.C. § 2091 (1958); 72 Stat. 632 (1958), 42 U.S.C. § 2153 (c) and (d) (1958); 68 Stat. 951 (1954), 42 U.S.C. § 2204 (1958); 71 Stat. 275 (1957); 42 U.S.C. § 2078 (1958).

<sup>29</sup> See Cooper and Cooper, *The Legislative Veto and the Constitution*, 30 *Geo. Wash. L. Rev.* 467 (1962); Ginnane, *The Control of Federal Administration by Congressional Resolutions and Committees*, 65 *Harv. L. Rev.* 509 (1953).

<sup>30</sup> In one situation, the JCAE took issue with certain provisions of the bilateral Agreement for Cooperation with Turkey, the first such bilateral agreement to be submitted to and to lie before the JCAE. The AEC responded to the Committee's "moral suasion," and provided assurances that desired changes would be made in future agreements. In only one case has the JCAE found it necessary to introduce disapproving legislation to block an objectionable matter lying before it. This was a proposed AEC Power Demonstration Reactor Program contract with Pennsylvania Power and Light Company and Westinghouse Electric Corporation. When the Chairman and Vice-Chairman of the JCAE introduced concurrent resolutions to block the contract, AEC quickly withdrew the proposal before action was taken on the resolutions. 104 *Cong. Rec.* 5878-80 (1958). See Green and Rosenthal, *supra* note 3, at 88-89.

<sup>31</sup> Green and Rosenthal, *supra* note 3, at 103-14.

<sup>32</sup> For example, the executive's steadfast refusal during the McCarthy era to make personnel and security files available to congressional committees.

of executive privilege, but a determination to resist has never been apparent.

Accordingly, one cannot attribute the power and success of the JCAE to its unique statutory authorities alone; rather, one must look also to the environment in which these authorities have been exercised to ascertain why the JCAE encroachment has not been more vigorously contested.<sup>33</sup> The reasons are manifold. First and foremost, the Atomic Energy Commission form of organization—a five-man Commission with staggered five-year terms—is a governmental form typically used for quasi-legislative and quasi-judicial rule-making and regulatory bodies. It seems quite inappropriate for management of a government activity which is essentially operational in nature. Such activities are usually directed by a single administrator who is directly responsible to the President. The fact that the atomic energy program is in the hands of a commission largely independent of the President has clearly weakened the President's control over the program and made him somewhat remote from the decisional process. Correspondingly, this situation, and the diffusion of authority among five coequal commissioners, have tended to create a power vacuum into which an aggressive JCAE could move. Moreover, the JCAE rejects the concept of collegiate responsibility among the five commissioners by its insistence that differences of opinion among them be brought to the JCAE. Similarly, the JCAE encourages subordinate officials of the executive branch to bring their complaints about established policy to the committee. Admiral Rickover, for example, frequently has aided and abetted the JCAE in upsetting established executive policies.<sup>34</sup> It would appear that the relative remoteness of the President from the Commission and from direct responsibility for decisions has tended to make JCAE invasion of executive prerogatives less obvious and less threatening. Indeed, a strong case can be made that the AEC is really an arm of the Congress rather than an arm of the executive branch.<sup>35</sup>

Moreover, the very nature of the atomic energy subject matter—an esoteric, scientific-jargoned, secrecy-shrouded complex—has induced

<sup>33</sup> Green and Rosenthal, *supra* note 3, at 75-79.

<sup>34</sup> See Green and Rosenthal, *supra* note 3, at 41, 106, 110 n.101, and 174 n.15.

<sup>35</sup> In this connection, it should be observed that the AEC seems to be particularly vulnerable to JCAE invasion. The Department of Defense, with its closer relationship to the President and its multitudinous connections with the Congress and members of Congress, has been rather successful in fending off JCAE demands which it finds objectionable. See address by James T. Ramey, then Executive Director of the JCAE, before the 1960 meeting of the American Political Science Association, Sept. 1, 1960.

the Congress to rely more heavily on its specialized committee arm than it normally does. In other subject areas, members of Congress who are not members of the cognizant committees frequently have a strong interest and competence in the subject matter, and perhaps constituent concern as well. In atomic energy, however, constituent interest has been minor at most, and the highly technical and secret nature of the subject largely has precluded extra-committee interest. Correspondingly, the lack of interest and knowledge outside the JCAE has increased the AEC's dependence upon the JCAE as the interpreter and spokesman to the Congress for its interests, and has precluded the AEC from developing other centers of influence and support within the Congress.<sup>36</sup>

It would be well to consider briefly the outcome of the JCAE's exercise of the unique authorities within this unique political and governmental environment. The JCAE has become the acknowledged dominant element in the national atomic energy program. As early as 1953, a member of the JCAE could state with considerable validity that many major policy decisions had been made by the JCAE "with the advice and consent of the executive branch."<sup>37</sup> Viewed in historical perspective, however, the JCAE's accession to power and dominance scarcely had begun.<sup>38</sup> Since that time, the JCAE's aggressive assertion of its right to be kept "fully and currently informed" has given it sufficient information about AEC policy decisions sufficiently early to enable the JCAE to participate fully in these decisions. In 1960, for example, the JCAE's knowledge that AEC was studying the feasibility of nuclear power for remote military installations was used to thrust upon the executive branch a mandate to construct a power reactor in the Antarctic at a time which the executive regarded as premature and in a manner which the executive thought contrary to sound management principles.<sup>39</sup>

<sup>36</sup> Many prominent members of Congress have been extremely candid in articulating their inability, or lack of interest, in comprehending and dealing with atomic energy matters. See Green and Rosenthal, *supra* note 3, at 78 n.15. It also should be observed that the JCAE is a relatively small committee with only 9 Senators and 9 Representatives. Most Senate Committees have 15-17 members: e.g., the Foreign Relations Committee has 17; Aeronautical and Space Sciences has 15; and Armed Services has 17. Most House Committees are much larger: e.g., Foreign Affairs has 33; Science and Astronautics has 31; Armed Services has 38.

<sup>37</sup> Address of Cong. Henry Jackson at the Atomic Energy Institute, University of Michigan Law School, June 28, 1952, reprinted 98 Cong. Rec. A4472 (1952).

<sup>38</sup> At that time, the JCAE and the AEC were acting as enthusiastic copartners. The JCAE's moves to dominate the program and seize control from the executive branch did not really get underway until early in 1955. Green and Rosenthal, *supra* note 3, at 1-20.

<sup>39</sup> *Id.* at 247-52.

Moreover, it should not be assumed that the JCAE merely reacts to executive initiative; on the contrary, it has an aggressive program of its own, often in conflict with the program of the President or the AEC. Through its control over the process of congressional authorization of appropriations for the AEC, it frequently has been able to thrust its own programs upon an unwilling, reluctant, or not yet prepared executive branch. For example, the JCAE was the principal proponent of the Aircraft Nuclear Propulsion program, and succeeded for many years in forcing an unwilling executive branch to conduct this program.<sup>40</sup> Indeed, the JCAE has made a shambles of the entire executive budgetary process in the atomic energy field.<sup>41</sup>

To a remarkable extent, however, the JCAE has brought its power to bear *within the executive branch and not within the Congress*. So successful has it been in marshalling the full resources of power at its disposal, that in most instances the executive branch is brought into a posture of acquiescence or cooperation with the JCAE's desires before congressional action is required. Frequently, basic policy decisions can be, and are, made without any legislation at all. Indeed, most of the great accomplishments claimed by the JCAE were achieved through pressuring the executive branch into acquiescence, and without any necessity for legislative action.<sup>42</sup> In this respect, the JCAE more closely resembles a high echelon component of the executive branch such as the Bureau of the Budget or the office of the President, than it does a congressional committee. This means that many basic decisions reflect merely the JCAE's own views; and

<sup>40</sup> Id. at 242-47.

<sup>41</sup> In recent years, the JCAE, as part of its procedures for authorizing AEC appropriations, has gone behind the President's budget by requiring AEC to submit data showing the budget requests of the various AEC divisions, the Commission's actions on these requests, the Commission's budget requests to the Bureau of the Budget, and the Bureau's handling of these requests. On a number of occasions, the JCAE has thrust upon the Commission programs which the Commission itself or the Bureau of the Budget had rejected. Id. at 83-87.

<sup>42</sup> Members of the JCAE have never attempted to conceal the importance of the Committee's extra-legislative role. A ranking member of the Committee stated in 1956 that the JCAE is "a sort of over-all board of directors for the atomic energy enterprise in coming up with recommendations and suggestions as to courses of action which may end as legislative proposals or *may be implemented by the Executive within existing statutory powers*." (Emphasis added.) Address of Cong. Melvin Price before the Atomic Industrial Forum and Chicago Bar Assoc., Oct. 10, 1956, reprinted Bull. of Atomic Scientists, 373 (Dec. 1956). In 1960, the JCAE Chairman and Executive Director wrote that the most unique function of the JCAE has been its "policy-making or recommending role," implemented by recommendations to both the Congress and the executive branch. They pointed out that this function "has been carried on informally," using "classified discussions and executive sessions with top AEC and military officials" as the "principal means of persuasion." Anderson and Ramey, Congress and Research: Experience in Atomic Research and Development, 327 Annals of the Am. Acad. of Pol. and Soc. Sci. 85, 87-88 (1960).

in holding and pushing these views the JCAE has no real accountability to any other authority. Where legislation is required, most frequently by the time Congress must act, the executive branch and the JCAE's respective positions are fused into a single package, usually reflecting the JCAE's minimum demands, which is then supported by both. Unless a particular matter touches off a deep ideological or partisan struggle—and sometimes even then—the matter reaches the floor of the House and the Senate in distilled, noncontroversial form, with basic policy issues often concealed, so that Congress acts as a mere rubber stamp.

There can be no question that the JCAE's role has made sharp inroads into executive power, and, in the atomic energy field at least, has arrested the steady trend towards expansion of executive power. It is by no means clear, however, that the loss of executive power and the enhancement of JCAE power are reflected in increased congressional power. Rather, it would appear that the JCAE, in operating in a relatively autonomous manner outside the usual legislative arena, has taken far more from the executive branch than it has given to the Congress. This means that the JCAE has emerged as a hybrid governmental institution with considerable power of its own: organically a part of the Congress, but functionally a mixture of executive and legislative.<sup>43</sup>

### III. *Applying the JCAE Model in Other Areas*

It is obvious that the JCAE precedent can be considered for application in other substantive areas of legislative interest on various levels. On the most elementary level, Congress might choose to create more joint committees with legislative powers, but without any of the special types of statutory authorities possessed by the JCAE. On a secondary level, such joint committees might be vested with authorities similar to those possessed by the JCAE, and, in such event, Congress might choose to allow its joint committees a measure of the autonomy and free-wheeling independence of the JCAE, or on the other hand, it might take steps to limit the scope of committee action and to assure proper accountability.

The concept of "jointness," standing alone, has many attractive features. A single joint committee undoubtedly could function more efficiently and economically, with a larger and better staff, than could two separate committees, one in each house of Congress. Such a

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<sup>43</sup> Green and Rosenthal, *supra* note 3, at 270-73.



joint committee would eliminate a tremendous amount of duplication of effort. A joint committee considering legislation to report to both houses simultaneously would greatly compress the usual time period and effort required to move bills through the Congress, since one complete cycle of staff study, hearings, marking up of bills, and drafting reports would be eliminated. Savings in paper and printing alone would be substantial. Officials of the executive branch would be spared the time and effort of preparing for dual testimony on most bills of major interest.

On the other hand, a significant price would be paid for the efficiencies and economies of joint committees. Legislation might be considered more efficiently and perhaps drafted more ably, but it would be considered much less thoroughly. The dual committee structure inherently introduces a greater diversity of approach and viewpoint in considering legislation; jointness would detract from the present interplay of many varied democratic forces in the legislative process.<sup>44</sup> Moreover, the "appellate" function of the dual committee system would be lost. Under conventional procedures, a party who does not have his point of view accepted by one committee has a second chance in the committee consideration of the bill in the other house. There would be much greater finality, and much less opportunity for revision and correction, in a joint committee. Anyone familiar with the haphazard nature and the vagaries of the legislative process will recognize that the role of the second committee's consideration is a very important one in the enactment of sound and technically accurate legislation.<sup>45</sup> Perhaps the greater resources of staff and time of a joint committee would enable production of a sound legislative product by one committee alone, but this is by no means a certainty.

There are, then, both advantages and disadvantages. The choice lies between the expeditiousness, efficiency, economy, and professionalism of the joint committee and the purer democratic process inherent in the traditional system. If Congress as an institution is becoming unable to cope with current governmental complexities, as

<sup>44</sup> It seems clear that the JCAE's role in the atomic energy field has reduced the involvement of non-committee members in atomic energy matters, has limited congressional scrutiny of atomic energy legislation, and has reduced the area and extent of public and legislative debate on and examination of atomic energy issues. *Id.* at 270-71.

<sup>45</sup> Atomic energy legislation since 1954 has involved numerous technical imperfections and many instances of ambiguity or lack of clarity. These may or may not have been eliminated had a second committee studied the bills.

many suggest, this in itself strains the democratic process. If conversion to a joint committee system would contribute to making Congress a more viable political institution, perhaps this in itself would produce a net gain for democratic processes, despite the negative democratic tendencies which are implicit in the joint committee format.<sup>46</sup>

Assuming that joint committees are desirable per se, we next consider whether or not other joint congressional committees, if created, should be vested with the unique powers possessed by the JCAE. Certainly there is no reason why they should not be endowed with power which would enhance their functioning, particularly if Congress also adopted measures to assure that these joint committees remained responsive and accountable to the Congress as a whole. This question is, however, of only superficial importance. While it is true that the JCAE's special statutory authorities have enabled it to exercise far more power and influence than its conventional dual committee counterparts, its power, in reality, is based not upon its possession of these special authorities, but rather upon the fact that the executive branch has permitted these authorities to be exercised in so expansive a manner. But, as previously discussed, such acquiescence in the JCAE's aggrandizement of power primarily is attributable to the political environmental context in which the authorities were exercised and not to the naked authorities themselves. It is highly unlikely, to say the least, that the executive branch would tolerate similar free-wheeling exercise of such statutory authorities by committees in other substantive legislative areas where the unique political environment of atomic energy does not exist. In all likelihood—if not certainly—the executive branch would draw a forceful line at the traditional point of separation of powers, and, as in all such previous confrontations, the Congress would undoubtedly be forced to retreat. Accordingly, it is doubtful that Congress could, even if it so desired, create another joint committee which could function in a manner approaching the JCAE model.

A more basic question is whether more committees like the JCAE would be good or bad for the Congress as an institution. The JCAE represents an extreme de jure delegation of congressional power to a

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<sup>46</sup> The efficiencies of the JCAE may in part be attributable to its small size. If additional joint committees were to follow this pattern and limit membership to twenty or twenty-five, many members of Congress would lose cherished committee assignments, and there might not be enough available committee billets to give each House member a seat on at least one standing committee.

committee, and an even more extreme assumption of de facto executive power by the committee. Most members of Congress have been quite content to recognize the JCAE as their agent vested with full power of attorney; few members recognize the JCAE for what it really is: a largely independent sovereignty whose influence and success lie primarily in its ability to compel the AEC to negotiate with it much in the manner that two sovereignties would negotiate a settlement of a territorial dispute.

Viewed in context, the JCAE contributes relatively little to the enhancement of the role or power of the Congress, except to the extent that any curbing of executive power increases the power of the Congress relatively. Its advantage to the Congress is, therefore, more in checking the accretion of executive power than in contributing to the effectiveness of Congress. This may be a useful and important function in itself, but it should be recognized as involving the creation of a new hybrid political force which is neither all legislative nor all executive, but a bit of both.

#### IV. *Conclusion*

Accepting the continuing validity, or at least the continuing immutability, of the concepts of executive privilege and separation of powers, it seems unlikely that the executive branch would tolerate any additional committees constructed to perform in the pattern set by the JCAE. If the JCAE has any utility as a model, it lies in a demonstration of the mechanics of joint committee operation in the legislative process. Regardless of the statutory charter which might be created and defined for any new joint committee, such a committee could not hope to approach the success and achievements of the JCAE. Joint committees could be used to solve many of the problems of delay, duplication, and inefficiency inherent in the dual committee structure. They could involve, however, some lessening of our present brand of democratic legislation and would warrant careful scrutiny and cautious implementation.